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6 Attorneys for Plaintiff
GERARDO HERNANDEZ

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 GERARDO HERNANDEZ,
11 Plaintiff.

V.

13 PALO ALTO SANDWICHES, INC.
14 DBA TOGO'S/BASKIN ROBBINS OF
15 EAST PALO ALTO; EAST PALO
ALTO, LLC.; CAHAN PROPERTIES,
INC.; and DOES 1-20 inclusive.

Defendants

CASE NO.

Civil Rights

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

1. **Violation of the Americans with Disabilities Act Title III [42 U.S.C. § 12182(a), *et seq.*]**
 2. **Denial of Full and Equal Access [Cal. Civil Code §§ 54 And 54.1]**
 3. **Violation of the Unruh Act [Cal. Civil Code § 51]**

DEMAND FOR JURY TRIAL

INTRODUCTION

22 1. Gerardo Hernandez (“Plaintiff”) has suffered from discrimination as a person with
23 disabilities while patronizing the combination Togo’s/Baskin Robins restaurant in the
24 Ravenswood Shopping Center located at 1741 E. Bayshore Rd. in East Palo Alto, California,
25 94303. Defendants discriminated against Plaintiff by failing to construct and maintain an
26 accessible restroom and accessible paths of travel as required by federal and State law and failing
27 to provide accessible counters and accessible dining tables, and failing to remove other barriers
28 to access. Plaintiff brings this lawsuit to enforce his rights under the Americans with Disabilities

1 Act and supplementary State laws. He seeks an order requiring Defendants to make the
2 Restaurant and associated paths of travel accessible to him and other similarly situated. Plaintiff
3 also seeks damages, attorneys' fees, costs and litigation expenses.

4

5 JURISDICTION

6 2. This Court has original jurisdiction of this action under the Americans with
7 Disabilities Act of 1990, 42 U.S.C. §§12101 *et seq.* (the "ADA").

8 3. The Judicial District of the United States District Court for the Northern District
9 of California has supplemental jurisdiction over the State law claims alleged in this Complaint
10 pursuant to 28 U.S.C. §1337(a). All the claims derive from a common nucleus of operative facts
11 and arose out of the same transactions. The State law claims are so related to the federal action
12 that they form part of the same case or controversy and the actions would ordinarily be expected
13 to be tried in one judicial proceeding.

14

15 VENUE

16 4. Venue in the Judicial District of the United States District Court for the Northern
17 District of California is in accordance with 28 U.S.C. §1331(b) because Plaintiff's claims arose
18 within this Judicial District and the property that is the subject of this action is located in this
19 District in the City of East Palo Alto and County of San Mateo, California.

20

21 THE PARTIES

22 5. At all times herein relevant, Plaintiff was a person with a disability as defined in
23 42 U.S.C. § 12102 and California Government Code § 12926(l). He is affected by paralysis that
24 requires him to use a wheelchair for mobility. His condition affects the following body systems:
25 Neurological, musculoskeletal, and/or cardiovascular. Plaintiff's condition substantially limits
26 major life activities, including standing and walking. Plaintiff cannot perform these activities in
27 the same manner, speed and duration as the average person. Moreover, Plaintiff has a history of
28 and/or has been diagnosed and/or classified as having a physical impairment. The State of

California has issued him a permanent disabled parking placard.

2 6. Defendants PALO ALTO SANDWICHES, INC. d/b/a TOGO'S/BASKIN
3 ROBBINS OF EAST PALO ALTO, a California corporation; EAST PALO ALTO, LLC., a
4 California limited liability company, and CAHAN PROPERTIES, INC., a California
5 corporation, are and at all times, relevant to the Complaint were, businesses or corporations
6 organized and existing and/or doing business under the laws of the State of California. Based
7 upon a review of public records, Plaintiff is informed and believes and based thereon alleges,
8 that the above-named Defendants and each of them, are the owner(s) and/or operator(s) of the
9 Togo's/Baskin Robbins restaurant business conducted in the Ravenswood Shopping Center
10 located at 1741 E. Bayshore Rd. in East Palo Alto, California ("The Restaurant). The named
11 Defendants will be referred to collectively as "Defendants."

12 7. On information and belief, at relevant times Defendants DOES 1 through 10 were
13 or are owners or co-owners of a real property interest in or to the Restaurant. On information
14 and belief, Defendants DOES 10 through 20 were or are operators of the Restaurant.

15 8. Defendants, and each of them, are the owners, operators, lessees and/or lessors of
16 the as public accommodations open to the public under the laws of the United States and the
17 State of California. During all times relevant to the Complaint, they each operate as a business
18 establishment under the laws of the State of California because they provide goods, services
19 and/or facilities in exchange for money.

20 9. Plaintiff is informed and believes, and thereon alleges, that Defendants and each
21 of them were, at all times relevant to the action, the owner, operator, lessor, lessee, franchiser,
22 franchisee, general partner, limited partner, agent, employee, representing partner or joint
23 venturer of the remaining Defendants and were acting within the course and scope of that
24 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the
25 Defendants herein, including their managing agents and owners, gave consent to, ratified and/or
26 authorized the acts alleged herein to each of the remaining Defendants.

STATEMENT OF FACTS

1 10. Plaintiff lives near the Ravenswood Shopping Center in East Palo Alto,
2 California. The Togo's/Baskin Robbins Restaurant in the shopping center is set up so that one
3 half of the ordering space is identified as Togo's with a Togo's menu, food preparation and
4 cashier, and the other half is set up as Baskin Robbins with a Baskin Robbins menu, food
5 preparation and cashier. However, the eating space, restrooms, and the facilities outside the
6 Restaurant are open to both Togo's and Baskin Robbins patrons.

7 11. Plaintiff frequently visits the Restaurant as a patron, up to one time per week,
8 including but not limited to December 20, 2018. As noted herein, Plaintiff is a wheelchair user.
9 The Restaurant is not accessible to him in multiple respects. As examples, ordering counters are
10 too high. When visiting, Plaintiff follows the signs directing him to the order counter for Togo's
11 and/or Baskin Robins, depending upon which menu he is ordering from; whichever counter he
12 chooses, because of the counter height, he must yell up and over the counter to order his food.
13 He cannot be heard by employees without yelling. He finds this both difficult and embarrassing,
14 as it draws attention to his disability. Yet the restaurant advertises that they have accessible
15 counters.

16 12. In addition, the tables at the Restaurant are not accessible to Plaintiff. He finds
17 them difficult to use because, among other problems, there is no accessible way to reach the
18 tables and none of the tables provides sufficient leg room. As a result, he sticks out into the aisle
19 when he uses the indoor seating. As a partial compensation he uses the outdoor seating when
20 available, although those tables lack legroom as well and are uncomfortable when the weather is
21 not fine. In bad weather, Plaintiff is deterred from visiting the Restaurant because he knows the
22 interior seating will be crowded and the exterior seating uncomfortable; if he does visit, he orders
23 his food to go when he would prefer to stay and eat there.

24 13. Additionally, Plaintiff found the location and approach to the designated
25 accessible restroom difficult and awkward to use. Inside the floor is so sloped that it makes
26 transferring difficult and unsafe. As a result, he cannot use the toilet independently and requires
27 assistance from his partner.

28

1 14. These conditions constitute deviations from the most basic access standards as set
2 forth in the 2004 Americans with Disabilities Act Accessibility Guidelines as well as the earlier
3 1991 Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities.
4 These conditions also fail to conform with State building regulations set forth in Title 24, Part 2,
5 Volume 1 of the California Code of Regulations, commonly referred to as the California
6 Building Code (the “CBC”). Plaintiff is informed and believes, and upon that basis alleges, that
7 these and other elements in the Restaurant violate the regulations for accessible construction.

8 15. Plaintiff has experienced loss of enjoyment, difficulty, embarrassment, frustration
9 and other kinds of distress because of the inaccessible condition of the Restaurant and
10 surrounding areas and the lack of accessible restroom facilities, all to Plaintiff’s general damages
11 in an amount according to proof.

12 16. Based upon a review of publicly available documents, Plaintiff is informed and
13 believes and thereupon alleges that the Ravenswood Shopping Center and the Restaurant were
14 constructed for first use on or about 2002. Therefore, the facilities were required to comply with
15 construction regulations for disability access, which had been in effect for approximately 30
16 years in California and a decade on the federal level. Moreover, based upon the national brand
17 recognition of Togo’s and Baskin Robins, and upon the sheer size and sophistication of the
18 Ravenswood Shopping Center, Plaintiff is informed and believes and thereupon alleges that
19 Defendants, and each of them, are sophisticated commercial restaurant owners and operators,
20 and/or sophisticated commercial real estate developers. They are familiar with the disability
21 access requirements that apply to their facilities and have applied for decades. Based upon the
22 fact that Defendants must have been aware of their obligations to their disabled patrons, yet built
23 and allowed the barriers to access to remain since the facilities opened, Plaintiff alleges that
24 Defendants’ behavior is intentional: They maintain discriminatory facilities and policies and
25 practices of failing to maintain accessible features, in conscious disregard of the civil rights of
26 Plaintiff and others similarly situated.

27
28

FIRST CLAIM

(For Discriminatory Practices in Public Accommodations; Violation of the Americans with Disabilities Act of 1990)

17. Based on the facts and allegations pled in Paragraphs 1 through 16 above (which Plaintiff re-pleads and incorporates herein by reference), Plaintiff was denied full and equal enjoyment of and access to Defendants' goods, services, facilities, privileges, advantages or accommodations in violation of the ADA. Plaintiff alleges that each Defendant owns, leases and/or operates a public accommodation as defined in 42 U.S.C. section 12181(7). The condition of Defendants' Restaurant and/or the manner in which Defendants provided services failed to provide full and equal access to Defendants' goods and services in public accommodations as required generally by the provisions of 42 U.S.C. sections 12182(a) and 12182(b)(1)(A). As set forth in this Complaint, Plaintiff was specifically subjected to discrimination in violation of 42 U.S.C. sections 12182(b)(2)(A)(iv); 12182(b)(2)(A)(v); 12182(b)(2)(A)(iii); 12183 and 12188 because Plaintiff was denied equal access to and enjoyment of the Restaurant.

18. Plaintiff has physical disabilities as alleged in Paragraph 5 above because Plaintiff's conditions affect one or more of the following body systems: Neurological, musculoskeletal and/or cardiovascular. Further, Plaintiff's physical impairments substantially limit major life activities, including standing and walking. Plaintiff cannot perform the above-noted major life activities in the manner, speed and duration when compared to the average person. Moreover, Plaintiff has a history of and/or has been diagnosed and/or classified as having a physical impairment as required by 42 U.S.C. section 12102(2)(A).

19. One of the specific prohibitions against discrimination under the ADA is set forth in 42 U.S.C. section 12182(b)(2)(A)(iv). That section prohibits, in pertinent part: "A failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities . . . where such removal is readily achievable."

20. Plaintiff alleges that the removal of each of the specific barriers that Plaintiff encountered as set forth above, was at all times, "readily achievable" pursuant to the factors set

1 forth in the ADA and the applicable regulations adopted by the United States Department of
 2 Justice under the ADA (said regulations being set forth in 28 CFR Part 36). Further, assuming
 3 *arguendo* that Defendants were able to meet their burden of production and of proof that the
 4 removal of the defined architectural barriers (or any of them) was or is not “readily achievable,”
 5 Defendants have failed conspicuously to make their goods, services, facilities, privileges,
 6 advantages and/or accommodations available through alternative readily achievable methods
 7 pursuant to the requirements of 42 U.S.C. section 12182(b)(2)(A)(v). Additionally, Defendants
 8 have conspicuously failed to obey the provisions of section 28 CFR §36.211 that require public
 9 accommodations to maintain features that are required to be accessible.

10 21. Defendants have failed 42 U.S.C. section 12182(b)(2)(A)(ii) “to make reasonable
 11 modifications in policies, practices and procedures when such modifications are necessary to
 12 afford such goods, services, facilities, privileges, advantages or accommodations to individuals
 13 with disabilities.” Based on the facts and allegations pled herein, Defendants failed and refused
 14 to modify their policies, practices and procedures in that they failed to have a scheme, plan or
 15 design to assist Plaintiff and/or others similarly situated in enjoying and utilizing Defendants’
 16 services, facilities, privileges, advantages or accommodations, as required by the ADA.
 17 Additionally, Defendants conspicuously failed to adopt required policies and procedures to allow
 18 people with disabilities to navigate the Restaurant effectively.

19 22. Based upon a public records search, Plaintiff is informed and believes and based
 20 thereon alleges that the Restaurant (or relevant portions thereof) was designed and constructed
 21 for first occupancy after January 26, 1993.

22 23. In this regard, 42 U.S.C. section 12183(a)(1) states that a failure to design and
 23 construct covered public accommodation buildings and facilities that are readily accessible to
 24 and useable by people with disabilities, as required by the ADA and the regulation enacted
 25 thereunder in 28 C.F.R. Part 36, is discriminatory and violates the ADA.

26 24. Plaintiff is informed and believes and based thereon alleges that Defendants have
 27 modified and altered the Restaurant on or after January 26, 1992, in a manner that affects the
 28 usability and accessibility of the Restaurant.

1 25. The ADA specifically prohibits discrimination against persons with disabilities in
2 the construction and alteration of public accommodations. In this regard, 42 U.S.C. section
3 12183(a)(2) as enforceable at the time of the incidents described herein prohibits:

4 (2) with respect to a Restaurant or part thereof that is altered by, on behalf
5 of, or for the use of an establishment in a manner that affects or could affect the
6 usability of the Restaurant or part thereof, a failure to make alterations in such a
7 manner that, to the maximum extent feasible, the altered portions of the Restaurant
8 are readily accessible to and usable by individuals with disabilities, including
9 individuals who use wheelchairs. Where the entity is undertaking an alteration that
10 affects or could affect usability of or access to an area of the Restaurant containing
11 a primary function, the entity shall also make the alterations in such a manner that,
12 to the maximum extent feasible, the path of travel to the altered area and the
13 bathrooms, telephones, and drinking fountains serving the altered area, are readily
14 accessible to and usable by individuals with disabilities where such alterations to
15 the path of travel or the bathrooms, telephones, and drinking fountains serving the
16 altered area are not disproportionate to the overall alterations in terms of cost and
17 scope (as determined under criteria established by the Attorney General).

18 Sections 36.402 and 36.403 of 28 C.F.R. Part 36 contain the regulations called for and referenced
19 in 42 U.S.C. section 12183(a)(2). As enforceable at the time of the incidents alleged herein,
20 section 36.402 of 28 C.F.R. Part 36 states, in pertinent part:

21 (a) General.

22 (1) Any alteration to a place of public accommodation or a commercial
23 Restaurant, after January 26, 1992, shall be made so as to ensure that, to the
24 maximum extent feasible, the altered portions of the Restaurant are readily
25 accessible to and usable by individuals with disabilities, including individuals who
26 use wheelchairs.

27 (2) An alteration is deemed to be undertaken after January 26, 1992, if the
28 physical alteration of the property begins after that date.

29 (b) Alteration. For the purposes of this part, an alteration is a change to a place of
30 public accommodation or a commercial Restaurant that affects or could affect the
31 usability of the building or Restaurant or any part thereof.

32 (1) Alterations include, but are not limited to, remodeling, renovation,
33 rehabilitation, reconstruction, historic restoration, changes or rearrangement in
34 structural parts or elements, and changes or rearrangement in the plan configuration
35 of walls and full-height partitions...

36 (2) If existing elements, spaces, or common areas are altered, then each such
37 altered element, space, or area shall comply with the applicable provisions of
38 appendix A to this part.

39 Section 36.403(a) of 28 C.F.R. Part 36 requires additional “path of travel” accessibility work to be
40

1 conducted in connection with certain alterations. That section, as enforceable at the time of the
2 incidents alleged herein states, in pertinent part:

3 (a) General. An alteration that affects or could affect the usability of or access to an
4 area of a Restaurant that contains a primary function shall be made so as to ensure
5 that, to the maximum extent feasible, the path of travel to the altered area and the
6 restrooms, telephones, and drinking fountains serving the altered area, are readily
7 accessible to and usable by individuals with disabilities, including individuals who
8 use wheelchairs, unless the cost and scope of such alterations is disproportionate to
9 the cost of the overall alteration.

10 Section 36.403(e) defines a path of travel as follows:

11 (e) Path of Travel.

12 (1) A ‘path of travel’ includes a continuous, unobstructed way of
13 pedestrian passage by means of which the altered area may be approached,
14 entered, and exited, and which connects the altered area with an exterior approach
15 (including sidewalks, streets, and parking areas), an entrance to the Restaurant, and
16 other parts of the Restaurant.

17 (2) An accessible path of travel may consist of walks and sidewalks,
18 curb ramps and other interior or exterior pedestrian ramps; clear floor paths through
19 lobbies, corridors, rooms, and other improved areas; parking access aisles;
20 elevators and lifts; or a combination of these elements.

21 (3) For the purposes of this part, the term ‘path of travel’ also includes
22 the restrooms, telephones, and drinking fountains serving the altered area.

23 26. Based on the facts and allegations pled at Paragraphs 1 through 26 above, and the
24 facts elsewhere in this Complaint, Plaintiff has been damaged and will suffer irreparable harm
25 unless Defendants are ordered to discontinue business at the Restaurant or: (i) remove
26 architectural and other barriers at Defendants’ property and otherwise obey the requirements of
27 the ADA and (ii) adopt policies and procedures that comport with the requirements of the ADA
28 with respect to the enjoyment of the facilities by guests with disabilities. Plaintiff alleges that
Defendants’ discriminatory conduct is capable of repetition, and this discriminatory repetition
adversely impacts Plaintiff and a substantial segment of the disability community. Plaintiff
alleges there is a national public interest in requiring accessibility in places of public
accommodation. Plaintiff has no adequate remedy at law to redress the discriminatory conduct
of Defendants. Plaintiff desires to fully-utilize Defendants’ place of business but is deterred
from doing so because of the barriers set forth herein. Accordingly, Plaintiff alleges that a

prohibitory or mandatory injunction, including a paid monitor, is necessary to assure that Defendants comply with the applicable requirements of the ADA.

3 27. Other access barriers may exist at the Restaurant. Plaintiff will seek leave to
4 amend this Complaint after a site survey of the premises by his access consultant, pursuant to the
5 9th Circuit's holding in *Doran v. 7-Eleven, Inc.*, 524 F.3d 1034 (9th Cir. 2008).

SECOND CLAIM

**(For Denial of Full and Equal Access in Violation of
California Civil Code Sections 54 and 54.1)**

10 28. Based on the facts and allegations pled in Paragraphs 1 through 27 above and
11 elsewhere in this Complaint (which Plaintiff re-pleads and incorporates herein by reference),
12 Plaintiff alleges that Defendants have discriminated against Plaintiff and violated Plaintiff's
13 rights under sections 54 and 54.1 of the California Civil Code. At all times relevant to this
14 Action, California Civil Code sections 54 and 54.1 have provided that physically disabled
15 persons are not to be discriminated against because of their physical disabilities and that they
16 shall have full and equal use of public facilities and other public places.

17 29. Section 54(a) of the California Civil Code states that individuals with disabilities
18 or medical conditions have the same right as the general public to the full and free use of the
19 streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals,
20 clinics and physicians' offices, public facilities and other public places.

21 30. Plaintiff is an individual with a disability as defined in California Government
22 Code section 12926.

23 31. California Civil Code section 54.1 (a)(1) provides, in pertinent part, as follows:

24 54.1(a)(1) Individuals with disabilities shall be entitled to full and equal
25 access, as other members of the general public, to accommodations,
26 advantages, facilities, ... places of public accommodation, amusement, or
 resort, and other places to which the general public is invited, subject only
 to the conditions and limitations established by law, or state or federal
 regulation, and applicable alike to all persons.

32. California Health & Safety Code section 19955 provides, in pertinent part:

1 The purpose of this part is to ensure that public accommodations or facilities
2 constructed in this state with private funds adhere to the provisions of
3 Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the
4 Government Code. For the purposes of this part ‘public accommodation or
5 facilities’ means a building, structure, Restaurant, complex or improved area
6 which is used by the general public... When sanitary facilities are made
7 available for the public, clients or employees in such accommodations or
8 facilities they shall be made available for the handicapped.

9 33. California Health & Safety Code section 19956, which is in the same Chapter as
10 section 19955, provides, in pertinent part: “All public accommodations constructed in this state
11 shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title
12 1 of the Government Code.”

13 34. California Health & Safety Code section 19956 became operative on July 1, 1970,
14 and is applicable to all public accommodations constructed or altered after that date.

15 35. Plaintiff is informed and believes and based thereon alleges, that the Restaurant
16 was constructed and/or has been substantially altered or modified after July 1, 1970.

17 36. Pursuant to the authority delegated by Government Code section 4450, *et seq.*, the
18 California State Architect promulgated regulations for the enforcement of the aforementioned
19 provisions of the Health & Safety Code and the Government Code. Since July 1, 1970, the State
20 Architect has developed and modified building regulations as set forth in the California Building
21 Code and its antecedents.

22 37. Plaintiff is informed and believes, and based thereon alleges, that construction,
23 alterations, remodeling and/or renovations have been conducted at the premises since July 1,
24 1970.

25 38. Plaintiff alleges that the construction, alterations, remodeling and/or renovations
26 were conducted in violation of the above provisions of California law and the CBC.

27 39. A violation of the above referenced sections of the Health & Safety Code and the
28 Title 24 regulations adopted thereunder constitutes a violation of the general anti-discrimination
provisions Civil Code sections 54 and 54.1.

40. Each violation of the Americans with Disabilities Act of 1990 also constitutes a
violation of sections 54(c) and 54.1(d) of the California Civil Code, thus independently justifying
an award of damages and injunctive relief pursuant to California law. Plaintiff alleges that he

1 has been denied such full and equal access as required by California law which incorporates Title
2 III of the ADA.

3 41. Section 54.3 of the California Civil Code provides that any person, firm or
4 corporation that denies or interferes with the admittance to or enjoyment of the public facilities
5 as specified in sections 54 or 54.1 thereof or who otherwise interferes with the rights of an
6 individual with a disability under sections 54 or 54.1 shall be liable for each such offense for the
7 actual damages, and up to three times actual damages, but in no case less than \$1,000, and such
8 attorneys' fees as may be determined by the Court.

9 42. These violations of Plaintiff's rights as alleged have resulted in the denial to
10 Plaintiff of full and equal access to the Restaurant and the goods and services offered there and
11 have caused Plaintiff to suffer the damage and harms set forth and alleged in this Complaint.

12 Plaintiff alleges that these discriminatory acts and omissions were intentional for
13 the reasons stated above.

14

15 **THIRD CLAIM**

16 **(For Violation of Section 51 of the California Civil Code)**

17 43. At all times relevant to this action, section 51 of the California Civil Code has
18 provided that physically disabled persons are not to be discriminated against because of their
19 physical disabilities. Based on the facts and allegations pled at Paragraphs 1 through 42 above
20 (which Plaintiff re-pleads and incorporates herein by reference), Plaintiff alleges that Defendants
21 have discriminated against Plaintiff and violated Plaintiff's rights under section 51 of the
22 California Civil Code.

23 44. Plaintiff has a disability as defined by section 12926 of the California
24 Government Code.

25 45. California Civil Code section 51(b) provides, in pertinent part:

26 (b) All persons within the jurisdiction of this state are free and equal, and no matter
27 what their sex, race, color, religion, ancestry, national origin, disability, or medical
28 condition are entitled to the full and equal accommodations, advantages, facilities,
privileges, or services in all business establishments of every kind whatsoever

46. Section 52(a) of the California Civil Code provides as follows:

(a) Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars (\$4,000), and any attorney's fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Sections 51, 51.5, or 51.6.

6 47. Each violation of the Americans with Disabilities Act of 1990 also constitutes a
7 violation of section 51(f) of the California Civil Code, thus independently justifying an award of
8 damages and injunctive relief pursuant to California law. Plaintiff alleges that he has been
9 denied such full and equal access as required by California law which incorporates Title III of
10 the ADA.

11 48. The barriers to access complained of herein as well as the failures to adopt and
12 modify policies and procedures are patent barriers to people with mobility disabilities and are of
13 an obvious and intuitive nature and demonstrate an intent to deny Plaintiff's rights. Parties who
14 own and/or operate restaurants are familiar with the requirements for the provision of accessible
15 features and policies, for use by people with disabilities and are aware that such matters are
16 governed by the ADA. Defendants intentionally allowed the barriers complained of herein to
17 remain at the Restaurant and failed to adopt or modify policies and procedures to provide access
18 to Plaintiff and persons similarly situated. Plaintiff's damages resulted from Defendants'
19 intentional acts and omissions.

WHEREFORE, Plaintiff prays for damages and relief as hereinafter stated.

PRAYER FOR RELIEF

23 A. For injunctive relief pursuant to 42 U.S.C. section 12188 and section 52 of the
24 California Civil Code. Plaintiff requests that this Court enjoin Defendants from continuing to do
25 business at the Restaurant prior to removing all architectural and policy barriers and otherwise
26 complying with the ADA and California laws or in the alternative, that this Court issue a
27 mandatory injunction requiring Defendants to immediately make the Restaurant fully accessible to
28 people with disabilities, all in compliance with the standards set forth in the ADAAG, ADAS and

1 the CBC. Plaintiff does not request any injunctive relief pursuant to section 55 of the California
2 Civil Code or section 19953 of the California Health & Safety Code;

3 B. For general and special damages pursuant to California Civil Code sections 52,
4 54.3, 3281 and 3333, and/or under common law;

5 C. For a trebling of actual damages, but in no event less than \$4,000 in damages
6 pursuant to California Civil Code section 52 for each and every violation of California Civil Code
7 section 51;

8 D. In the alternative to the damages pursuant to California Civil Code section 52 in
9 Paragraph B above, for a trebling of actual damages, but in no event less than \$1,000 in damages
10 pursuant to California Civil Code section 54.3 for each and every violation of California Civil
11 Code section 54.1 and/or California Civil Code section 54;

12 E. For attorneys' fees and costs pursuant to 42 U.S.C. §12188(a), California Civil
13 Code §52; California Civil Code §54.3, California Code of Civil Procedure §1021.5; and

14 F. For such other further relief as the Court deems proper.

17 Date: March 8, 2019

DERBY, McGUINNESS & GOLDSMITH, LLP

18 _____
19 /s/Celia McGuinness
By CELIA McGUINNESS, Esq.
Attorneys for Plaintiff
20 GERARDO HERNANDEZ

22 **DEMAND FOR JURY**

23 Plaintiff hereby demands a jury for all claims for which a jury is permitted.

25 Date: March 8, 2019

DERBY, McGUINNESS & GOLDSMITH, LLP

26 _____
27 /s/Celia McGuinness
By CELIA McGUINNESS, Esq.
Attorneys for Plaintiff
28 GERARDO HERNANDEZ